

PROPOSED FINDINGS DENYING USE PERMIT AMEDNMENT APPLICATION (UA2006-2) FOR SALE OF ALL TYPES OF LIQUOR PJ #2450

Planning Commission Denial: October 25, 2006

Uphold the Planning Commission denial based on the below finding:

1. The Project is not in conformance with Section 57 because the finding cannot be made that the proposed use will not be detrimental or injurious to property or impact public health, safety and general welfare given the location, design, and operating characteristics of the Jerry's Market property under the proposed CUP application are not compatible with the public interest for the following reasons:

a. Significant Police Activity

The Milpitas Police Department documented 45 incidents occurring at, or in close proximity to, Jerry's Market during a five-year period from July 2001 to July 2006. Of the 45 incidents, 40% were calls from Jerry's Market reporting criminal activity. While the remainder can not all be conclusively attributed to customers of Jerry's Market (though some can), all occurred within close proximity to the market, and several involved open containers of beer, which Jerry's Market is currently allowed to sell as a legal non-conforming use. The 45 incidents included several fraudulent transactions (as reported by Jerry's Market), physical and/or verbal altercations, physical assaults, theft, stops of suspicious persons or vehicles resulting in an arrest, incidents of graffiti, public urination, and noise complaints. Specific incidents included sexual assault of a mentally challenged female by a customer in front of Jerry's Market. Another incident involved a suspicious person loitering in front of the market. The suspect engaged a passer-by in an apparent exchange and was later found to be in the possession of drugs. Given the severity and pervasive nature of the incidents, and current problems at Jerry's Market, the City Council finds that permitting liquor sales at the market would exacerbate the problems.

b. Proximity to an Elementary School and Correctional Facility

Jerry's Market is located less than 500 feet from Zanker Elementary School and would be in the path of travel for both middle and high school students. Additionally, the Market is walking distance from the Elmwood Correctional Facility and residents have expressed concerns about recently released inmates of the Correctional Facility frequenting the Market. Allowing increased alcohol sales would exacerbate these problems and the risks they pose.

c. Proximity to Park Areas and Greenbelt Pathways

Residents have expressed concerns over the litter and graffiti found in near-by parks, and the parks' use as a gathering place for people to smoke, drink alcohol, and conduct other nuisances. Among the litter found in the park by City staff are cigarette butts, empty and broken beer bottles, and used condoms. The sale of liquor in such close proximity to the park and greenbelt pathways would exacerbate this problem.

2. The use proposed under the CUP is not compatible with the existing residential neighborhood because patrons of the Market are known to congregate outside of the Market and in the local parks where they have harassed the residents. The sale of liquor would perpetuate many of the current conflicts between residents and patrons of Jerry's Market. The site is surrounded by residential neighborhoods, including single-family residences to the West. This has created problems in the past with public intoxication and public disturbances, as well as the specific criminal activity described above. The sale of liquor would exacerbate these problems.
3. Allowing the sale of liquor at Jerry's Market does not provide any added public benefit, given that other liquor establishments within the area provide the same service. Decisions as to "where to draw the line" are best left to the local zoning agencies, "as they are in the best position to exercise sound judgment as to appropriate uses for sites within the zoning classifications which they establish." (*Id.*)

Mayor Esteves opened the public hearing for testimony.

Speakers:

Rod Meir, resident on Gibbons Ct, Vice President of Pines Home Owners Association, had been to many meetings, and voiced strong opposition to the liquor license. He was opposed to the issue being continued to the next meeting and wanted Council to vote this evening to deny the license. The store owner was putting off the homeowners, he felt.

Fae Arroyo, long time resident of the Pines, believed the owner Mr. Ali was not a responsible owner of stores. He had experienced problems with other stores he owned, with sales to minors of alcohol. She was opposed.

Rosemary Fowler, of Rosetree Ct., had attended many meetings on this topic already. She was pleased that the Planning Commission listened to the residents by voting down the request. She was opposed to it and asked Council to listen to the Pines residents.

Rick Warren, attorney for Jerry's Market owner Mr. Aslam Ali, explained the request for appeal, and that due to the fact that many supporters of the application were not available this evening, the continuance was requested. He noted there were Pines residents who were in favor of Jerry's Market request who wanted to give testimony to the City Council.

John Shields, Lonetree Ct, was upset at the tactic used by Mr. Ali again, to put off this issue. He did not want the alcohol license issued at Jerry's Market.

Romy Pajardo, resident of Lonetree Ct. behind the market and had lived there since 1969 and raised his kids there. He had moved to Livermore, and rented out his Milpitas house. He had concerns for safety of his future tenants, and was against liquor sales.

Gary Cerezo, lived on Blue Spruce Way, five minutes from Jerry's. He mentioned another store, which was only a few minutes farther away. He did not want to politicize the issue during the election time. He remembered Mr. Ali coming to his home, asking for support for his petition, but Mr. Cerezo was opposed to the license.

Rob Means, of Yellowstone Ave, spoke on behalf of Jerry's Market at the Planning Commission in the fall. He was suspicious of the request to have a continuance. He felt the day after New Year's Day was not a good date. Maybe the continuance could be conditional on current owner to appear at a later date in the new year.

Phil Tuet was opposed to Jerry's Market getting the license. He asked Council to show respect to those who showed up this evening and for the process. The Pines Home Owners Association showed its disfavor already.

Loren Plum, of Green Tree Way, lived across the street behind Jerry's. He was sad that this issue kept getting extended. He was unhappy with Mr. Ali's assurances to date and was opposed to the liquor license.

Mike Novotny, lived immediately behind Jerry's for close to 30 years. He felt the January 2 date was a problem. Beer and liquor did not belong at this store in this neighborhood. In the past, the request was turned down numerous times in years past and he was opposed.

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

October 25, 2006

**I.
PLEDGE OF
ALLEGIANCE**

Chair Williams called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Ali-Santosa, Azevedo, Galang, Mandal, and Williams
Absent: Ciardella and Tabladillo
Staff: Bejines, Hom, Pio Roda and Williams

**III.
PUBLIC FORUM**

Chair Williams invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
October 11, 2006**

Chair Williams called for approval of the minutes of the Planning Commission meeting of October 11, 2006.

Staff had no changes.

Motion to approve the minutes of October 11, 2006.

M/S: Mandal/Ali-Santosa

AYES: 4

NOES: 0

ABSTENTION: 1 (Azevedo)

**V.
ANNOUNCEMENTS**

Staff had no announcements.

Commissioner Ali-Santosa announced that he would not attend the first Commission meeting in November. Chair Williams clarified there is only one meeting in November and December.

**VI.
CONFLICT
OF INTEREST**

Assistant City Attorney Pio Roda asked if the Commission has any personal or financial conflict of interest on tonight's agenda.

There were no Commissioners that identified a conflict of interest.

**VII.
APPROVAL OF
AGENDA**

Chair Williams called for approval of the agenda.

Staff has no changes to the agenda.

Motion to approve the agenda.

M/S: Galang/Azevedo

AYES: 5

NOES: 0

VIII.
CONSENT CALENDAR
None

Chair Williams asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Staff had no changes to the consent calendar.

IX.
PUBLIC HEARING
1. USE PERMIT
AMENDMENT NO.
UA2006-2 (Continued from
September 27, 2006):

Cindy Hom, Project Planner, presented Use Permit Amendment No. UA2006-2, a request for approval to add sales of all types of alcohol in conjunction with an existing convenience store located at 1491 South Main Street and recommended denial based on the finding noted in the staff report.

Commissioner Azevedo asked if a member of the Police Department is here tonight and Ms. Hom said yes.

Chair Williams asked if Section 57 that pertains to single-family residence being detrimental would apply to high density, mixed use project. Tom Williams, Planning and Neighborhood Services Director, said that Section 57 is applicable, however in terms of land use, staff will look at each application on a case-by-case basis.

Commissioner Mandal asked staff to clarify the memo that was handed out prior to tonight's meeting. Ms. Hom said that the first attachment is an e-mail from the applicant noting that he originally offered 100k to the HOA, but is now rescinding his offer to 50k to repair the common wall. The other attachments are e-mails regarding public comments that are in favor of the application. Mr. Williams added that right before the meeting, staff received the attachments and the memorandum.

Commissioner Azevedo asked how does the police report data compare with other convenient stores in the community. Steve Pangelinan, Field Services Division Commander for the Police department, said that he looked at some numbers with respect to the Dixon Mart and Liquors on Dixon Road comparing its similarity to its proximity to the residential community but there were 74 events related to that store within the same relative timeframe, 2001 to 2006.

Commissioner Azevedo asked if there was a possibility that once this store becomes a liquor store, will there be more police calls and Officer Pangelinan said it that could be a possibility.

Commissioner Mandal asked Officer Pangelinan if he could explain the data that was passed out to the Commission prior to the meeting. Officer Pangelinan said that the crime analyst ran a data report that showed there were 64 events that occurred near Jerry's market, and with those 64 events, it was determined that 45 events occurred at Jerry's market or closely in front of Jerry's market.

Vice Chair Galang said with regards to the police calls in 2001, do most of the calls come from Pines residents? Officer Pangelinan said that most calls are from the business owner himself, some are from the residents, and some are called in anonymously or from someone passing by.

Vice Chair Galang asked what does fraudulent transaction activities mean? Officer Pangelinan said that it could be somebody attempting to pass a bad check or someone attempting to use a stolen or fictitious credit card.

Vice Chair Galang asked if most of these calls come from Jerry's and Officer Pangelinan said yes.

Commissioner Mandal asked if fraudulent checks are a common thing that happens with other businesses and Officer Pangelinan said yes.

Chair Williams introduced the applicant.

Aslam Ali, Owner of Jerry's Market, 1491 S. Main Street, stated that his family bought the store about five years ago and they take their operation very seriously. His family has been in the business for over 25 years and have never sold liquor to underage minors. The market is well kept and very clean, and they try to serve the community as best as possible. He noted that he received over 500 petitions from his customers in support of his liquor license. Right now, his customers have to drive to San Jose, or Milpitas Liquor to get alcohol and there is no other store within walking distance near the Pines. He explained that a liquor store is needed in the area to serve the future residents that are coming right across the street from Jerry's. He also explained that Jerry's has equipment to see if a customer has a real or fake drivers license. He also pointed out that he has tried to bend over backwards in working with the neighborhood and they do not want to work with him.

Commissioner Azevedo said he read somewhere that the Mr. Ali had other liquor licenses at previous stores and sold to minors. Mr. Ali said that he has operated 80 to 90 stores and has had to rely on the employees, but in the past, his employees sold to minors about five to seven times. Now, though, he has a strict policy and sends employees to training and if they get caught selling to minors, they are terminated.

Commissioner Azevedo asked if Mr. Ali's machine takes into consideration a false ID and Mr. Ali said yes.

Commissioner Azevedo asked what guarantees does Mr. Ali have that he will get rid of the graffiti and the litter in the neighborhood. Mr. Ali said that Jerry's will do their best to have the area around Jerry's clean and they have done a much better job than the previous owner.

Commissioner Mandal said that it seems like Mr. Ali is really trying to work with the neighborhood and asked him if he is flexible enough to work with the HOA to come up with a solution that everyone is comfortable with.

Mr. Ali said that he has tried to bend over backwards for the HOA such as offering to put a net on a fence to prevent litter being thrown away or repairing a wall behind his store or adding lights near a dark alley and also offering to close at 11 a.m. instead of 2 a.m. He said he has offered many things but the HOA is not interested.

Commissioner Ali-Santosa said he attended an HOA meeting and met with Mr. Ali himself. He asked if his equipment is able to check on out of town passports. Mr. Ali said that 98% of his customers have California ID however the machine covers every state in the US.

Vice Chair Galang asked if Mr. Ali is aware of the number of police calls since 2001. Mr. Ali said in the last 5 ½ years, not one police officer has ever called him to complain about Jerry's. He didn't know that an incident report even existed until he saw the staff report. He noted that about a year ago, police officers paid him a visit and asked to see one of his videotapes because a neighbor was burglarized. He also pointed out that his store has fourteen cameras inside and outside of the store.

Vice Chair Galang asked Mr. Ali how many employees he has and he said four not including him and his wife.

Vice Chair Galang asked Mr. Ali if he works everyday and Mr. Ali said yes.

Vice Chair Galang asked if residents feel comfortable talking to him. Mr. Ali said he encourages residents to talk to him. He said six months ago, he contacted the HOA to have one of his employees clean up the park and pick up litter every single day once a day, however he needed their permission for that. He said he never got permission from them. When he bought the store, there were a lot of problems. He immediately installed two cameras in front of his store and stopped selling certain brands of cheap wine because it would not benefit his store or the neighborhood.

Commissioner Azevedo said he had been in the grocery business for 42 years and had a convenience store for 22 years so he can relate to Mr. Ali. He suggested that Mr. Ali wait for a while to try to work with the neighborhood and then come back in the future to apply for a liquor license. Mr. Ali said that the HOA is not interested and will say no. He has talked to them a number of times and the answer is always no.

Chair Williams opened the public hearing and noted those who wish to speak have a three-minute restriction imposed.

Commissioner Ali-Santosa asked that all speakers state their name, address, and proximity to the store.

Rob Means, 1421 Yellowstone, lives three miles away, stated that Mr. Ali is doing a good job with his business and the Commission should support him, if not, another store will pop up in town and will sell liquor. He felt that Mr. Ali is a very good man because he contributes to Little Leagues and the community and also pointed out that Mr. Ali is willing to give the HOA 50k and that should be enough to clean up the park and litter. He also suggested that the HOA install sprinklers so that the owners can turn them on at will and deter people from loitering. He is in favor of the project.

Rick Warren, Berkeley, Attorney for Mr. Ali, clarified that the reason the last meeting was continued was because they asked staff to go back to the police department to get more information about the police calls to see if there was a correlation of services attributed to Jerry's market. He said they were not permitted to see the original reports itself, so they trusted the police to see if there was any indication in those 45 calls, whether an employee or customer of Jerry's was involved in the police information. Of the 45 calls, 19 originated from employees calling because of fraudulent activity or they witnessed something happen to a member of the public. He is in favor of the project.

Tammy, 1731 Starlite in the Pines, said she is shocked to hear there is litter in the neighborhood because Jerry's is a very clean store. She said that if the Commission says no to Jerry's, they are saying no to the community. She pointed out that Mr. Ali had a donation box set up for someone that was hit by a driver. She is in favor of the project.

Ramona Bennet, 2151 Old Oakland Road, Space 603, lives about a mile from Jerry's, said that Mr. Ali takes his business very seriously and is vigilant about checking for underage drinkers. He is also very security conscious and is known as a responsible businessman. She is in favor of the project.

James Meyers, 73 Lonetree Court, lives about 100 feet from Jerry's, is opposed to the liquor license. He has nothing personal against Mr. Ali but is concerned about bringing liquor to the neighborhood because of his concern for the children. He is not in favor of the project.

Debbie Lynch, 1799 Starlight Drive, lives about three blocks from Jerry's, said that she felt that Jerry's should have his liquor license because of convenience. The store is very clean and she doesn't think it would make a big difference if he sold alcohol. She is in favor of the project.

Dennis Smith, Senior Business Consultant and Milpitas Rotary member, 500 Glenmore Circle, lives about two miles from Jerry's, stated that as a fellow member, Mr. Ali can be counted on for accountability. If he says he is going to do something he will do it. He said that Mr. Ali should be granted a liquor license. He said he was appalled to hear that Elmwood's proximity to Jerry's would be a problem and felt that should be taken up with the County, not Mr. Ali. He is in favor of the project.

Willie Miller, 156 Lonetree Court, lives in the second block behind Jerry's Market, said he goes to the park every day and does not see a lot of litter there but the park is on the other end away from the store, but when goes to Jerry's, it is very clean and he doesn't think that Jerry's should be held accountable for the graffiti because they are not selling spray paint. He is in favor of the project.

Ms. McClay, School Teacher, 1848 Camphor Court, lives a few blocks from Jerry's, and opposes the liquor license, said Mr. Ali is a good guy but she doesn't want liquor near her neighborhood. She said that a lot of people that spoke in favor of liquor don't live near the neighborhood. When inmates are released from Elmwood, they go directly to Jerry's and the children bused out of the school pass right near Jerry's. She supports small businesses but not hard liquor. She is not in favor of the project.

Bobby Miller, 156 Lonetree Court, lives 2 blocks behind the store, stated that she walks a lot in the neighborhood with her grandchildren and hasn't seen any troublemakers. She said Mr. Ali doesn't let people loiter outside his store and he has a very clean store and he always checks ID and is a very responsible man. The Palms restaurant has already had a killing across the street and she doesn't think the liquor will make a big difference. She is in favor of the project.

Mike Ali, 2012 Oaks Drive, Pleasanton, said that he likes Jerry's and how Mr. Ali treats customers. He said the City should let him have a temporary license for six months on a trial basis and if it doesn't work out, the City could revoke it. He is in favor of the project.

Margie Stevens, 1683 Rocky Mountain, Milpitas, doesn't live in the Pines, said the store is shiny bright and she has never seen a cleaner convenient store and never sees litter or graffiti when she walks around the store. She said if the store itself made calls to the police department it would be a good thing because it means they are paying attention to their customers. She said that Jerry's doesn't sell to minors and she is in favor of the project.

Carmella Tomasini, 86 Woodland Court, said this issue has come up many times before on several occasions. She is not opposed to the market, but selling hard liquor is out of the question because Zanker elementary is nearby. She said that Milpitas has so many stores that sell alcohol at decent hours and felt there are other more important issues to address at the City. She is not in favor of the project.

Steven Thomas, 2151 Old Oakland Road, #532, San Jose, lives 1 mile from Jerry's, said ever since Mr. Ali took over the store, he has seen a big improvement. He felt that if there are problems with the Pines, he doesn't think Jerry's should be held responsible. He is in favor of the project.

Richard Langhorse, 1580 Fallen Leaf Drive, lives 200 feet from Jerry's, said he doesn't have a problem with Jerry's. Mr. Ali has a very clean store and is a very polite and good man. The issue is with the community and the children that have to be bused by public transportation that pass through there. He said the neighborhood doesn't need liquor there. When Elmwood detainees are released, they are given money and walk to the bus stop in front of Jerry's. He is not in favor of the project.

Janet Wilson, 83 Cedar Way, 6 houses off of Main street, around the corner from Jerry's, said she has the brunt of the traffic and foot traffic in the neighborhood. She does support Jerry's getting the liquor license. She said there is an establishment across from Jerry's that serves liquor and Elmwood has always existed there. She felt that the comparisons of the Pines neighborhood to Dixon Landing liquors was not appropriate because she believes most stores in Milpitas do sell liquor adjacent to residential areas and schools. She appeals to her fellow Pines HOA to support the project because Mr. Ali has offered too much to make them feel comfortable. She also felt the residents should discipline their children not to litter. She is in favor of the project.

Kerry Jergens, 1707 Starlight Drive, 4 blocks from Jerry's, said the Pines has always had graffiti and glass problems but it is up to the neighborhood to take care of that. She doesn't see how it ties into Jerry's liquor license. She said if a kid wants liquor he can get it anywhere he wants. She said Jerry's is a lot cleaner than other stores and she gets carded all the time and feels safe there. She also pointed out that there was a domestic issue in the Pines and it took the police ten minutes to show up. She also said it is up to the community to handle the issues as far as keeping the neighborhood safe. She is in favor of the project.

Michael Gellum, Manager at the trailer across the street, 1504 S. Main Street, said that detainees are released from Elmwood at 2 a.m. and as far as graffiti is concerned he doesn't see it anymore. He said Mr. Ali is a good man and takes care of his store. He is in favor of the project.

John Shields, 45 Lonetree Court, 3 houses down from Jerry's, said that Mr. Ali is doing a good job with Jerry's, however people leave their beer cans in the streets. He doesn't think liquor will benefit the community, and as far as safety goes, he has seen broken bottles there and other disgusting things. He is not in favor of the project.

Loretta James, 1389 Fallen Leaf Drive, lives four blocks from Jerry's, said he is store is very immaculate and felt that teenagers will be able to buy liquor where they want and felt that Mr. Ali should be given a temporary license. She is in favor of the project.

Mrs. Fe Aurelia V. Doyle, 80 Lonetree Court, lives 80 feet from Jerry's, wants to know what the police recommendation. She pointed out that most of Jerry's supporters don't live there. She said she has been accosted from people in the neighborhood and that Mr. Ali's character is not in question but the selling of hard liquor is. She is not in favor of the project.

Kathy Lee, 2022 Yosemite Drive, 3 miles from Jerry's, said her relatives live behind Jerry's and she came to support him. She thinks Jerry's should get his liquor license because he manages a very good clean store and has good customer service. She felt that if he has a license, the store cannot cause any more problems because if the kids want liquor, they can go to any store. She is in favor of the project.

Rosemary Fowler, 86 Lonetree Court, said she does not want liquor in her yard and felt that bottles and being drunk do not mix with children. She is not in favor of the project.

Eli, 1825 Forest court, lives five blocks away from Jerry's, said that he is out early in the morning and never sees problem in front of the bus stop at Jerry's. He said that he is unsure of where he stands on this project and it is not Mr. Ali's character that should be questioned but the character of those who buy from him that should cause concern.

Denise Perry, 45 Lonetree Court, lives 5 houses from Jerry's, said that the Police initiated a DARE program in school and there are sex offenders in the Pines. She felt that when you start mixing alcohol and sex offenders it doesn't work. She is not in favor of the project.

Karen Vialma, 2151 Old Oakland Road, lives about a mile from Jerry's, felt that the neighborhood should be responsible for cleaning up litter and graffiti and not Jerry's. She is in favor of the project.

Adrian Tidwell, 343 Manzanita Court, lives ½ mile from Jerry's, said it is ridiculous that Jerry's is being considered a threat to the Pines and felt it is the responsibility of the residents to keep the neighborhood clean. She said she was one of the first volunteers to help paint away graffiti and even won an award and no one in the Pines offered to help. She said no one from the neighborhood is helping keep the place from turning into a slum and people are loitering in the park every Friday night. She is in favor of the project.

Mike Novotny, 36 Greentree Way, lives right behind Jerry's and is against the liquor license.

Don, lives off of Landess, 2 miles from Jerry's, says Mr. Ali is a model for all small business owners to follow in Milpitas and always takes the effort to make the best of his store and the vicinity. He is in favor of the project.

Russ Bargstadt, 1307 Stardust Way, President of the HOA, said this is the third time since he has been in the Pines that they have had to battle a liquor license. Mr. Ali did contact the HOA about picking up litter behind the store and the HOA contacted him back but said that he needed to provide liability insurance because the HOA didn't want to be sued. When people speak in favor, it is about what a nice guy Mr. Ali is but it is the impact on the neighborhood where the problem exists. How does the sale of liquor improve the neighborhood? He felt that Mr. Ali's beer and wine license should be revoked too.

Commissioner Azevedo asked if the board voted not to give Mr. Ali his permit. Mr. Bargstadt said they did a poll and the board was against it.

Commissioner Azevedo asked how did the homeowners vote. Mr. Bargstadt said that the 90% of the attendees were against the sale of liquor.

Commissioner Azevedo asked if he polled the homeowners themselves. Mr. Bargstadt said that they did not do a track wide vote.

Commissioner Azevedo asked if it is under the Commission's authority to pull a use permit.

Mr. Williams said they would have to take it separate from the application and would have to look at the degree of violations and get the ABC involved. Based on all of the research staff has done for this application, he would recommend that there are not sufficient findings.

Matt Garvey, 96 August Court, 1.8 miles from the store, has worked across the street from Jerry's for nineteen years and has never seen the store as clean as it is now. He felt that Mr. Ali should get his liquor license and he is in favor of the project.

Guy Haas, 1277 Fallen Leaf, Treasurer of the HOA, two blocks from Jerry's, said there is a liquor store near Dixon and he noticed they had a parking lot with a fence that they shared with residents and now it is completely blocked off. The HOA itself tries to get rid of graffiti. He said his wife worked at Elmwood and she says they release people at all times of the day, not just 2 a.m. He is not in favor of the project.

Larry Laverdo, 1658 Fallen Leaf drive, stated that Jerry's is a convenience store and he should be able to sell liquor. He is in favor of the project.

Will Kong, 1696 Fallen Leaf Drive, lives a block from Jerry's, is against Mr. Ali selling liquor because it is right near an elementary school and a residential neighborhood. He is not in favor of the project.

Irene Johnson, 56 Lonetree Court, lives in back of Jerry's, felt that Mr. Ali has been doing a great job however the problem is the liquor. She is not in favor of the project.

Araceli Tapia, 1736 Starlight Drive, is very upset about being here tonight and said that Mr. Ali approached her to sign a petition for a deli, not hard liquor. She even called the Principal of Zanker elementary school to inform her about the petition. She said that Mr. Ali's customers tried to intimidate the board and one of the ladies was so afraid she was going to move out of town. She is very disappointed in the process and would like someone to listen. She is not in favor of the project.

Philip Tuitt, 1756 Pinewood Court, two blocks away from Jerry's, is opposed to hard liquor because he felt that it doesn't improve public safety and is concerned the upgrade of the liquor license will not improve the neighborhood. He is against the project.

Julie Goldberg, 251 West Capitol, five blocks from Jerry's, felt that neighborhood doesn't need liquor because of safety issues. She is against the project.

Mrs. Jose, Director of the Pines HOA, 1863 Starlight Drive, 3 blocks from Jerry's representing the homeowners, said at the last two meetings, 100 people attended and everyone who spoke, spoke against having the hard liquor license being accepted. Tonight, there were 16 residents from the Pines against it and only ten from the Pines who were for it and the rest do not even live in the Pines. She is not in favor of the project. She asked if the Commission would want this in their backyard.

Commissioner Azevedo asked how many homes is part of the HOA, and Mrs. Jose said 862 homes.

Dennis Graham, Fallen Leaf Drive, lives 1 block from Jerry's, said at the HOA meeting, there were 9 people who voted for it, and of those nine, only four lived near Jerry's. 18 people in the Pines voted against it, and of those, 14 people voted for it and they lived a mile away. He said Mr. Ali just started cleaning up his store recently. He said 95% of the Homeowners are against the project. He is not in favor of the project.

Lad Uni, 1825 Forest Court, lives four blocks from Jerry's, said in the past he has voted against the license, however tonight, he felt that Mr. Ali should be given a provisional liquor license. He is in favor of the project.

George Bessler, 2151 Old Oakland Road, lives 1 mile from Jerry's, said he is concerned because there seems to be 800 homes in the Pines, but the number of people that are coming out is a small fraction of that number. He said the parties that are going out on Friday's are not the responsibility of Jerry's and the neighborhood should be held responsible for cleaning up their area. If Jerry's market closed tomorrow, he doesn't see how the community will be changed. He is in favor of the project.

Anwar Virani, 6141 Capriana Common, Fremont, pointed out that he has raised three children and one is of drinking age and felt that when talking about children and school it is about the values the parents teach their kids. He has his own kids visit liquor stores to buy food. He respects people with kids, however it is not the liquor store, it is the parents education and the values they teach. He has owned liquor stores and has dealt with litter for so many years and it has nothing to do with the liquor stores. He drives expressways everyday and he sees litter everywhere. He said people shouldn't blame it on Jerry's but should be educated. He is in favor of the project.

John Jay, 542 South Main Street, lives a mile away from Jerry's, said the issue is not Jerry's market but the people that attend. He thinks Jerry's will be an upscale market and Mr. Ali is trying to improve his business. He asked if there is an issue with drugs in Jerry's. He is in favor of the project.

Richard Matfeld, 122 Woodland Court, lives 200 yards from Jerry's, said he visits Jerry's market about five times a week. He drinks beer, wine and hard liquor and felt that this is a legal product that Jerry wants to sell and he doesn't see any reason why he shouldn't sell it. He is on Main Street, deals with people that are driving by all the time and he is not right next to the grade school. Felt the whole argument is ridiculous and felt that he should get a temporary license. He is in favor of the project.

Matt Husein, 351 Macintosh Terrace, Fremont, frequents Jerry's market, felt that having liquor would benefit the neighbors by adding another service. He felt that Mr. Ali should have a license on a trial basis. He is in favor of the project.

Motion to close the public hearing.

M/S: Mandal/Azevedo

AYES: 5

NOES: 0

Close the Public Hearing

Commissioner Azevedo asked if the police have a recommendation whether Jerry's should be allowed a liquor license and Mr. Williams said that the police does not make a recommendation but the Planning Dept. does.

Commissioner Azevedo asked whether drugs is a problem at Jerry's and Mr. Williams deferred that question to Officer Pangelinan.

Commissioner Azevedo apologized to the audience for having to come out so many times, but stated that the Commission has to be fair and listen to everyone. He also explained that the applicant was the one who requested the continuance.

Vice Chair Galang asked Mr. Williams to explain the incidences from 2001 to the present and if Mr. Ali was notified about the police reports regarding loud noise and graffiti. Mr. Williams deferred the question to the police department.

Office Pangelinan said in terms of contacting Mr. Ali to address the concerns in the Pines, he can't say whether or not someone contacted Mr. Ali or the previous owners directly. For a number of years, the police have addressed the issues that many of the Pines residents have expressed in the form of increased patrol or in the form of community oriented police projects designed to address some of the problems heard tonight.

Commissioner Mandal said that people have a general tendency that when a problem happens, they are afraid to call the police department because they don't want their name to be published and don't want to bring more problems to the neighborhood. He asked if the police department has a facility where people can put their calls in anonymously.

Officer Pangelinan said the police have a few mechanisms by which people can bring information. When calls are received via 911 or general business lines, it is a routine procedure for the dispatchers to ask the caller to identity themselves so in the event if a call is disconnected the dispatcher can re-contact the person or they can be a potential witness to a criminal event but it is not a requirement. So in the event that someone wants to contact the police department via the website, via the crime tip hotline, or the general business line or 911, and they want to remain anonymous, that is something they can do, and the police will not push the issue and will still follow up on the information.

Commissioner Mandal asked if there was any recollection of any drug related issues at Jerry's. Officer Pangelinan said that he can't say specifically that Jerry's market is the source for drug activity, however there have been events that have occurred within close proximity or within the property of Jerry's that are associated with drug activity.

Commissioner Ali-Santosa said he reviewed this police report and noticed that based on the data presented from 2005-2006, he seen comments that the officer initiated the event. He said it seems like criminal activity tend to gravitate towards the location and asked Officer Pangelinan if he agrees.

Officer Pangelinan said the data does tend to suggest that. At any given area of town, there will be an officer who initiates activity such as making car stops or seeing potentially suspicious activity and they are going to take action. Jerry's market is a very busy place and officers are going to see a lot of vehicular and pedestrian traffic that goes right through which does generate attention.

Commissioner Azevedo asked if it is a matter of policy when the police are called to a residence, they park away from the residence and not directly in front. Officer Pangelinan said that it is not a matter of policy but it is a tactic that is employed as a matter of safety to the officer.

Commissioner Mandal asked if Milpitas was divided in different zones, would this area be considered a problem zone? Officer Pangelinan said he couldn't say that this section of town is any more fraught with criminal activity than any other section.

Motion to deny Use Permit Amendment No. UA2006-2 based on the findings in the staff report.

M/S: Azevedo/Ali-Santosa

AYES: 3 (Ali-Santosa, Azevedo and Mandal)

NOES: 2 (Galang and Williams)

**X.
ADJOURNMENT**

The meeting was adjourned at 9:33 p.m. to the next regular meeting of November 8, 2006.

Respectfully Submitted,

Tom Williams
Planning and Neighborhood Services
Director

Veronica Bejines
Recording Secretary

From: rickwarren [rickwarren@pacbell.net] **Sent:** Wednesday, 10/25/2006 3:58 PM
To: Cindy Hom
Cc: Tom Williams; 'ASLAM ALI'; 'Bob Sylvia'
Subject: Jerry's Market-REVISED CONDITIONS AND ANALYSIS OF POLICE CALLS



Jerry's Market- Final
Proposed Conditions :



Jerry's Market Police
Calls-Further Analysis

Attachments:

Hello Cindy:

Please distribute this e-mail and the attachments to the Planning Commission for tonight's meeting.

REVISED CONDITIONS

Mr. Ali has decided to withdraw the offer to pay the HOA for crime prevention measures.

He has increased the amount he will pay to repair the common wall. He now offers to pay 100% of the cost of that repair or replacement up to a maximum of \$50,000.

Attached is the final version of the conditions proposed by Mr. Ali.

COMMENTS REGARDING STAFF'S ANALYSIS OF POLICE RECORDS

Because Jerry's Market has not been cited by the Milpitas Police or the ABC for any violations in more than 5 years, I was dismayed by staff's analysis of police calls attributed to Jerry's Market that paints an unfounded and unfair picture. Staff started out by reporting 45 police calls to Jerry's Market over the five (5) years from July 2001 to July 2006.

TIME OF REPORTED CALLS

28 of those calls were reported during daytime hours before 5:00 p.m., 11 were reported between 5:00 p.m. and 11:00 p.m., and 6 of these calls were reported after 11:00 p.m.

RECORD OF POLICE CALLS SUPPORTS GRANTING APPLICATION

Staff's own analysis indicated that 19 of the police calls from the store's employees to report fraudulent transactions, theft, intoxicated persons and threatening pit bulls. Since Jerry's Market has a constitutional right to report crimes of which it or other customers are the victim, it appears that staff did not rely on these 19 calls to support its recommendation of denial of Jerry's Market application. That leaves 27 calls for service to be analyzed further.

On October 19, you provided me further details from the police department's review of its own investigation reports that indicated that there was no evidence of any nexus or connection in 23 of those 27 calls to the store's operation. A copy of the police department's analysis is attached.

The Police Department's October 18, 2006 analysis concluded that in 23 of those 27 calls for service it had no basis for determining if anyone involved was customer or employee of Jerry's Market. That leaves only four police calls, items 23, 26, 35, and 36, in five years that involved a customer of the store. In item 23, one customer damaged another customer's vehicle in the store

parking lot. In item 36, a customer's cell phone was stolen from his car parked in front of the store with the convertible top open. Items 26 and 35 are discussed below.

Staff's report identified "22 incidents of concern that substantiate the negative neighborhood impacts expressed by the neighboring Pines residents." In nearly all of those calls, there is no evidence linking such calls for service to the store's operation. On October 19th, I pointed that out to you requested that you delete such calls from your report. Not only did staff include those police calls to support its recommendation of denial, but it emphasized some calls that have absolutely nothing to do with Jerry's Market. For example, staff's report emphasizes items 15, 26, and 35. Those items, excerpted from the police analysis are as follows:

15. November 8, 2002; 10:34 pm [02-312-177]

"Mentally challenged female adult accosted and sexually assaulted by customer in front of business. The suspect exited the store, and walked northbound. The suspect saw the victim, who was walking southbound toward the store. The suspect accosted the victim approximately 40 feet north of the store and sexually assaulted her. The victim's mother reported the incident to police."

OUR COMMENT: Because this happened 40 feet north of the store, and there is no basis to determine if the store's employees had any reason to know it happened, and it is unfair to suggest this is evidence of a problem with the store's operation.

26. September 21, 2003; 3:56 pm [03-264-107]

"Suspicious person detained by officers in front of store. Person arrested for possession of drugs and violation of parole. The suspicious person was a store customer. Officers observed and recognized the person as he walked out of the business. The person was a known parolee. The person's vehicle was parked in front of the business. The officers initiated this event. No call for service was received."

OUR COMMENT: The police recognized this person as a parolee, and found him in possession of drugs. There is absolutely no evidence of any conduct of drug dealing or any other inappropriate behavior that should have been observed by the store's employees. It is unfair for staff to suggest that this incident is evidence of a problem with the store's operation.

35. July 19, 2005; 10:09 pm [05-200-195]

"Two males fighting in front of business. Both involved males were customers of the store. The disagreement between the two began while both were in the store. The fight occurred after they walked out. An anonymous person reported the incident to police."

OUR COMMENT: There is no evidence to indicate that this fight was known to the store's employees. This was a disagreement between two customers that escalated to a fight outside the store. It is unfair for staff to suggest that this incident is evidence of a problem with the store's operation.

Staff's report also points out three incidents in which the persons involved were found with open beer containers, items 6, 7 and 33, however there is no evidence that the beer was purchased from the store.

Staff's report concluded that, based on its analysis of the police calls attributed to Jerry's Market, there was a nexus between those calls and the store's operation. There is no substantial evidence to support that conclusion.

To the contrary, there is virtually no evidence of any such nexus. After eliminating the calls for service made by an employee to report a crime, the records of the Milpitas Police Department show that Jerry's Market customers were involved in only four calls for service in the past five years. That is evidence of a well run operation, not a police problem.

Therefore, the police records support the granting of the application by Jerry's Market to add spirits to the products it may sell.

CONCLUSION

I understand that you will distribute this e-mail and the attachments to the members of the Planning Commission for tonight's meeting. Many thanks for your consideration.

Sincerely,

Rick Warren

Richard D. Warren
Attorney, Mediator and Arbitrator
929 Fresno Avenue
Berkeley, CA 94707-2304
Tel: 510.528.4423
Fax: 510.528.1123

EMAIL's ATTACHMENTS:

JERRY'S MARKET PROPOSED CONDITIONS

REDUCED HOURS OF OPERATION: Jerry's Market will be open from 6:00 a.m. and close at 11:00 p.m. every night.

We will also close off the rear parking lot from 10:00 p.m. until 6:00 a.m. These changes alone will substantially reduce the potential for noise disruptions to our nearest neighbors.

LITTER AND GRAFFITI PREVENTION: On Jerry's Market property, Jerry's Market will pick up litter twice a day and paint over graffiti within one day.

For litter on the Pines' property, a Jerry's Market employee will pick up litter daily in the common area and playground behind Jerry's Market.

REPAIR OF COMMON WALL: Jerry's Market will pay the full costs (not to exceed \$50,000) to repair the common wall on our property line with the HOA.

ADD "GOOD NEIGHBOR" SIGNS: We have already put up several "Good Neighbor" signs in our parking lot to remind our customers to avoid loud noise and music that might disturb our nearby neighbors.

IMPROVE VIDEO SURVEILLANCE OF JERRY'S MARKET PARKING AREA: We will install two more cameras (4 total) to give complete coverage of the parking area and we will keep the video recordings for 14 days and make them available to law enforcement upon request.

ADD VIDEO SURVEILLANCE OF HOA'S COMMON AREA. Jerry's Market also offers to the HOA that it will provide and maintain on Jerry's Market property one or more cameras that will view the HOA side of the common wall, provided the HOA will agree that Jerry's Market will not be liable for providing such service.

SIGNS NOT TO LOITER AND NO DRINKING OF ALCOHOL: We will provide improved signs reminding our customers not to loiter and prohibiting any drinking of alcohol on our property.

LIMITING FLOOR AREA THAT MAY DISPLAY ALCOHOLIC BEVERAGES: To prevent changing our convenience store to a liquor store, no more than 45% of our customer floor area may be used to display alcoholic beverages.

1. July 27, 2001; 12:11 pm [01-208-054]

Business owner reports having received 2 fraudulent checks.

2. October 15, 2001; 6:16 pm [01-288-160]

Business reports that fraudulent transactions occurred.

3. November 11, 2001; 12:01 am [01-315-001]

Physical fight between two men. Both were separated when officers arrived. One was contacted inside store. **One of the involved combatants reported the incident to police. The fight occurred in front of the store. It is undetermined whether either of the combatants were store customers.**

4. January 7, 2002; 12:15 pm [02-007-063]

Business reports that 2 fraudulent checks were passed.

5. January 9, 2002; 1:06 pm [02-009-080]

Business reports having received a fraudulent check

6. February 2, 2002; 4:47 pm [02-057-100]

Officers contacted suspicious person in the parking lot of the business. Officers observed that the person was holding an opened container of beer. The person was arrested for an outstanding arrest warrant. It is undetermined whether the person arrested was a store customer. The officers initiated this event. No call for service was received.

7. February 27, 2002; 4:21 pm [02-058-106]

Suspicious person stopped by officers in the parking lot of the business. Officers observed that the person was holding an opened container of beer. The person was arrested for an outstanding warrant. It is undetermined whether the person arrested was a store customer. The officers initiated this event. No call for service was received.

8. March 23, 2002; 5:42 pm [02-082-114]

Officers contacted suspicious person in the parking lot of the business. Officers observed as the person was urinating against a wall. It is undetermined whether the person arrested was a store customer. The officers initiated this event. No call for service was received.

The person was arrested for two outstanding arrest warrants.

9. April 4, 2002; 9:54 pm [02-094-156]

Customer walked out of the store after shopping. She called police to report that she saw 2 suspects “tagging” an exterior wall of the business, and she provided suspect information to officers. Officers followed-up and identified the suspects. The business owner was contacted and did not desire any further action from police.

10. April 5, 2002; 6:36 pm [02-095-131]

Officers began watching a suspicious person loitering in front of the business. Officers observed the person for at least 30 minutes. The person engaged a passer-by and an apparent exchange occurred. Officers contacted the person, and found that he was in possession of drugs. It is undetermined whether this person was a store customer. The officers initiated this event. No call for service was received.

11. June 11, 2002; 8:40 pm [02-162-147]

Officers observed a suspicious person standing in the parking lot of the business, near a motor home. Officers began speaking with the person and determined that he had an outstanding felony warrant for his arrest. The person was arrested. It is undetermined whether this person was a store customer. The officers initiated this event. No call for service was received.

12. October 18, 2002; 11:24 pm [02-291-204]

3 adult males physically fighting in front of the business. One male was down on ground with injuries upon arrival of officers. A passer-by went into the store to ask the clerk to call 911 to report the fight. It is undetermined whether the combatants were customers of the store.

13. October 25, 2002; 6:12 pm [02-298-021]

Employee reports a burglary to the business occurred.

14. November 7, 2002; 3:35 pm [02-311-107]

Employee reports suspect inside store attempting to cash fraudulent check.

15. November 8, 2002; 10:34 pm [02-312-177]

Mentally challenged female adult accosted and sexually assaulted by customer in front of business. The suspect exited the store, and walked northbound. The suspect saw the victim, who was walking southbound toward the store. The suspect accosted the victim approximately 40 feet north of the store and sexually assaulted her. The victim’s mother reported the incident to police.

16 November 23, 2002; 3:04 pm [02-327-106]

Verbal argument between male and female in front of business. Officers arrived to mediate the dispute. No arrests. An anonymous person reported the incident. It is undetermined whether the two people involved were customers of the store.

17 December 3, 2002; 10:35 am [02-337-062]

Officers contacted a suspicious person in the parking lot of the business. Officers discovered that the person had two outstanding warrants for his arrest. It is undetermined whether this person was a customer of the store. The officers initiated this event. No call for service was received.

18 December 7, 2002; 4:45 pm [02-341-111]

Employee reports customer attempting to cash bad check

19 December 11, 2002; 8:42 pm [02-345-175]

Employee reports fraudulent transaction

20 February 25, 2003; 10:31 am [03-056-044]

Employee attempting to detain fleeing customer who tried to cash bad check.

21 March 1, 2003; 4:24 pm [03-060-120]

Non-injury auto collision in driveway to business parking lot. One of the involved parties called police to report the incident. Both involved parties were store customers.

22 May 19, 2003; 2:09 pm [03-139-080]

A vehicle was stolen from the parking lot of the business. The car had been parked in the lot for 5 days due to engine trouble. The vehicle owner reported the crime to police. It is undetermined whether the vehicle owner was a customer of the business.

23 June 7, 2003; 11:27 pm [03-158-271]

Vandalism: One customer of the business intentionally damaged the vehicle of another customer while both were in the parking lot of the store. The victim customer called to report the incident to police.

24 August 1, 2003; 5:08 am [03-213-038]

Employee reports burglary to business.

25 September 8, 2003; 11:11 am [03-251-073]

Two pit-bull dogs in front of store scaring customers. The store clerk called to report the incident to police.

26 September 21, 2003; 3:56 pm [03-264-107]

Suspicious person detained by officers in front of store. Person arrested for possession of drugs and violation of parole. The suspicious person was a store customer. Officers observed and recognized the person as he walked out of the business. The person was a known parolee. The person's vehicle was parked in front of the business. The officers initiated this event. No call for service was received.

27 October 3, 2003; 11:54 pm [03-276-248]

Several males physically fighting in parking lot of business. Officers discovered one involved person with head injuries. Two of the males physically resisted officers when contacted. An anonymous caller reported this incident to police. It is undetermined as to whether the involved parties were store customers.

28 March 26, 2004; 5:37 pm [04-086-171]

Employee reports fraudulent transaction at business.

29 April 23, 2004; 11:10 pm [04-114-239]

Employee reports intoxicated person sleeping in parking lot for past 5 hours.

30 June 7, 2004; 6:30 am [04-159-033]

Stolen vehicle found parked in lot of business. The vehicle was originally stolen in San Jose. The victim happened to find it parked in the lot of the store. The victim called to report this incident to police. The victim was not a store customer.

31 January 2, 2005; 9:14 pm [05-002-174]

Employee reports intoxicated person in store causing a disturbance

32 January 29, 2005; 3:19 pm [05-029-131]

Mentally challenged person physically assaulted and injured in front of business. Both the victim and suspect were in front of the store when the assault occurred. It is undetermined as to whether the victim or suspect were store customers. The caretaker of the victim reported this incident to police.

33 February 24, 2005; 4:34 pm [05-055-169]

"Man down" report in front of business. Officers contact a passed-out intoxicated man. Officers discovered that the intoxicated man was asleep on the sidewalk in front of the business. There was a puddle of vomit and an empty 40 oz. bottle of

beer next to him. The person who reported this incident to police was not identified. It is undetermined as to whether the intoxicated man was a store customer.

34 May 31, 2005; 10:02 am [05-151-073]

Employee reports suspect attempting to cash stolen check.

35 July 19, 2005; 10:09 pm [05-200-195]

Two males fighting in front of business. Both involved males were customers of the store. The disagreement between the two began while both were in the store. The fight occurred after they walked out. An anonymous person reported the incident to police.

36 August 4, 2005; 12:53 pm [05-216-082]

Theft from a vehicle parked in front of business. The victim left the top to his convertible down and went inside the store to make a purchase. When he came out a few minutes later, he realized that his cell phone had been stolen. The victim reported this incident to police.

37 August 30, 2005; 2:43 am [05-242-014]

Burglary in progress at business. An employee discovered the crime and reported the incident.

38 January 9, 2006; 3:06 pm [06-009-145]

Stolen credit card used at business.

39 January 9, 2006; 3:07 pm [06-009-146]

Fraudulent check cashed at business.

40 April 21, 2006; 9:20 pm [06-111-229]

Suspicious person stopped by officers in lot of business. Arrested for outstanding warrants. It is undetermined whether the suspect was a store customer. The officers initiated this event. No call for service was received.

41 May 23, 2006; 12:24 pm [06-143-108]

Forged check cashed at business.

42 May 31, 2006; 6:11 pm [06-151-245]

Suspicious juvenile stopped by officers in front of business. Arrested for violation of probation warrant. It is undetermined whether the suspect was a store customer. The officers initiated this event. No call for service was received.

43 June 2, 2006; 3:30 pm [06-153-168]

911 hang-up call from pay phone.

44 June 29, 2006; 8:03 am [06-180-065]

Domestic quarrel between male and female while parked in front of business. Female broke window to vehicle. It is undetermined whether either party was a store customer. Correctional Officers from the Elmwood Correctional Facility reported this incident to police.

45 July 13, 2006; 11:52 pm [06-194-236]

Several people talking loud and laughing in the lot of business, disturbing neighbors. Officers contacted several people in the lot and instructed them to quiet down. It is undetermined whether these individuals were customers of the store. The person who reported this incident to police was a nearby resident who was disturbed by the noise.